



OFFICE OF THE POLICE COMMISSIONER
ONE POLICE PLAZA • ROOM 1400

August 21, 2023

Memorandum for: Deputy Commissioner, Trials

Re: **Police Officer Jamal Newton**
Tax Registry No. 949391
26 Precinct
Disciplinary Case No. 2021-24334

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on February 28, 2023, and was charged with the following:

DISCIPLINARY CASE NO. 2021-24334

1. Police Office Jamal Newton, on or about September 22, 2021, while on duty and assigned to the 110th Precinct, refused to obey a lawful order and instructions of his supervising officer when he refused to attend a detail assignment (*Dismissed*).

2. Said Police Officer Jamal Newton, on or about September 22, 2021, while on duty and assigned to the 110th Precinct, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department when said Police Officer was discourteous to a supervisor.

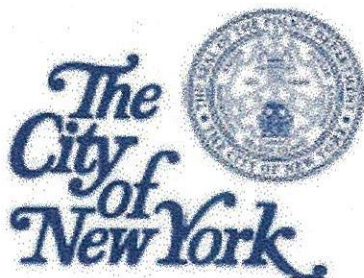
A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

In a Memorandum dated March 31, 2023, Assistant Deputy Commissioner Jeff S. Adler found Police Officer Jamal Newton guilty of Specification No. 2, and Specification No. 1 was dismissed prior to trial in Disciplinary Case No. 2021-24334. Having read the Memorandum and analyzed the facts of this matter, I approve the findings, but disapprove the penalty.

After reviewing the facts and circumstances of this matter and in light of Police Officer Newton's profanity-laced, aggressive insubordination, directed at a sergeant who was properly performing his supervisory duties, I have determined that an higher penalty is warranted. Therefore, Police Officer Newton shall forfeit thirty (30) vacation days, as a disciplinary penalty.

Edward A. Caban
Police Commissioner



POLICE DEPARTMENT

March 31, 2023

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In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2021-24334
Police Officer Jamal Newton	:	
Tax Registry No. 949391	:	
26 Precinct	:	

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At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Jeff S. Adler
Assistant Deputy Commissioner Trials

APPEARANCES:

For the Department: Maria Paolillo, Esq.
Department Advocate's Office
One Police Plaza, Room 402
New York, NY 10038

For the Respondent: Craig Hayes, Esq.
Worth, Longworth & London, LLP
111 John Street, Suite 640
New York, NY 10038

To:

HONORABLE KEECHANT L. SEWELL
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS¹

2. Police Officer Jamal Newton, on or about September 22, 2021, while on duty and assigned to the 110th Precinct, engaged in conduct prejudicial to the good order, efficiency, or discipline of the Department when said Police Officer was discourteous to a supervisor.

A.G. 304-06, Page 1, Paragraph 1

PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on February 28, 2023. Respondent, through his counsel, entered a plea of Not Guilty. The Department called Sergeants Alfred Foy and Francisco Luciano as witnesses. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having evaluated all of the evidence in this matter, I find Respondent Guilty, and recommend a penalty of 20 vacation days.

ANALYSIS

Respondent is charged with being discourteous to a sergeant inside the 110 Precinct at approximately 1700 hours on September 22, 2021. Specifically, it is alleged that when Respondent and his partner returned to the command after having made an arrest on an assault case, Sergeant Alfred Foy, the desk officer, asked which one of them was taking the arrest. When the officers informed him that Respondent's partner would be processing the arrest, Sergeant Foy verbally instructed Respondent that he must report the following day at 0415 hours

¹ Specification 1, charging Respondent with refusing to obey a lawful order, was dismissed by the Department Advocate prior to trial.

for the United Nations General Assembly ("UNGA") detail. It is alleged that in response to this order, Respondent was discourteous to the sergeant.

Sergeant Foy testified that he had been informed by a sergeant in the administrative office that he needed to assign either Respondent or his partner to the UNGA detail, whichever one was not handling the assault arrest. It was the end of the day tour, and they were the only two officers still available. When Sergeant Foy directed Respondent that he had to appear for the detail the following morning, Respondent stated to him, "You got the wrong fucking person. I'm not fucking doing this. I'm going sick." Respondent made these comments in a raised voice, using a tone that sounded "aggressive and annoyed." The sergeant reiterated to Respondent that he had to go, because the detail was assigned to him. Sergeant Foy testified that he was "shocked" by Respondent's behavior, since he notifies officers of such assignments on an almost daily basis, and never has received this type of response from any of them. He also did not have any problems with Respondent prior to that day. According to Sergeant Foy, at the time of this incident, Sergeant Francisco Luciano, the patrol supervisor, was at a computer about five feet to his left. (Tr. 13-18, 23-24, 29-30, 37-38, 40-41)

Immediately following this exchange, Respondent abruptly walked away from the desk, and went upstairs to the locker room. Sergeant Foy testified that he sent other officers to inform Respondent that he needed to return to the desk; Respondent told the officers, "I'll get there when I get there." When Respondent returned about five or ten minutes later, Sergeant Foy again ordered him to appear for the detail the following morning. Respondent handed the sergeant a paper with a sick desk control number, scanned out, and exited the precinct. (Tr. 18-20, 32-34, 38, 41)

After Respondent left the command, Sergeant Foy went to speak with the Executive Officer and Integrity Control Officer regarding what had transpired. Sergeant Foy testified that they advised him to call the Internal Affairs Bureau ("IAB") to report what happened, which he promptly did. A recording of Sergeant Foy's call to IAB, in which he related the details of his interaction with Respondent, was admitted into evidence. (Dept. Ex. 1) (Tr. 21-23, 35-36)

Sergeant Francisco Luciano testified that he was sitting approximately 10 feet away from Sergeant Foy when he heard him assigning the detail to an officer; from his vantage point, Sergeant Luciano could not see who the officer was that his colleague was addressing, but later learned it was Respondent. In response to the order, Sergeant Luciano heard Respondent state, "You got the wrong fucking guy. I'm not going to do that." According to Sergeant Luciano, the comment was made with a raised voice, in a tone that was a "little aggressive." Sergeant Luciano was so surprised at the response that he turned to Sergeant Foy, with whom he is friends, and asked him, "Is he fucking with you?" since Sergeant Luciano was unsure whether Respondent was just "messing with" Sergeant Foy. Sergeant Luciano testified that Respondent's use of profanity toward a supervisor was contrary to common courtesy, and that where, as here, an officer receives a direct order, it is his responsibility to "just do it." In fact, Sergeant Luciano had never heard an officer speak to a superior officer in that manner during his 18 years of service. After the exchange, Respondent went upstairs. Sergeant Luciano suggested to Sergeant Foy that he speak with the Commanding Officer regarding what had occurred. (Tr. 47-52, 54, 58, 62)

Respondent testified that he was feeling lethargic and under the weather on the day of the incident. He did not call in sick that day since he knew he was scheduled to be off the following two days and would have time to rest and recover. When he and his partner returned to the

command after the assault arrest, Sergeant Foy informed Respondent that he was assigned to the UNGA detail the following morning. Respondent answered that he was not feeling well, and needed time to get better. When Sergeant Foy asked him to sign the notification for the detail, Respondent told him that he was going out sick, and walked away since it was the end of his tour. Respondent testified that he did not use any profanity in his conversation with Sergeant Foy, and insisted he was polite during their exchange. (Tr. 67-70, 75-81)

After he left the desk, Respondent went upstairs to the locker room, where he called the sick desk, and received a control number. Another officer told him to come back down, and Respondent returned to the desk when he completed his phone call. Respondent testified that he refused to sign the notification for the detail since he was out sick. He placed the paper with the control number on the desk and left the precinct. Respondent was out sick for approximately two weeks with the flu. (Tr. 71-73, 81)

Specification 2 charges Respondent with being discourteous toward his supervisor. The Department Advocate relies on the testimony of Sergeants Foy and Luciano in support of their allegation that Respondent was discourteous, in that he said to Sergeant Foy, "You got the wrong fucking person. I'm not fucking doing this. I'm going sick." Respondent denies that he used any profanity during the incident.

Sergeant Foy was detailed and consistent as he testified about his interaction with Respondent. After he verbally ordered Respondent to appear for the UNGA detail the following morning, Respondent spoke back to him in a loud, aggressive tone, and used profanity. Respondent then walked away from the desk without signing the notification. Sergeant Foy, who did not have any prior issues with Respondent, was straightforward in his testimony, and did not appear to be embellishing his description of events.

Moreover, Sergeant Luciano corroborated his account, testifying in a detailed, professional manner regarding the exchange he overheard. He, too, described the profanity used by Respondent as he addressed the desk sergeant in an aggressive tone. Indeed, it is telling how taken aback both sergeants were by the manner in which Respondent addressed Sergeant Foy, and I credit their testimony regarding the inappropriateness of Respondent's actions.

Even if Respondent was feeling sick at the time he received the notification from Sergeant Foy, his statements to the sergeant were unreasonable and unacceptable. In response to a lawful order, he spoke back to his supervisor in an aggressive tone, and used profanity. Respondent's actions were discourteous, unprofessional, and contrary to the good order, efficiency, and discipline of the Department, and I find him guilty of Specification 2.

PENALTY

In order to determine an appropriate penalty, this Tribunal, guided by the Department's Disciplinary System Penalty Guidelines, considered all relevant facts and circumstances, including potential aggravating and mitigating factors established in the record. Respondent's employment history also was examined. *See* 38 RCNY § 15-07. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached memorandum.

Respondent, who was appointed to the Department on July 6, 2010, has been found guilty of being discourteous to a supervisor. The Department has recommended a penalty of 20 vacation days, based on the presumptive penalty for insubordination. Counsel for Respondent suggests that Sergeant Foy, who had been in the rank of sergeant for approximately nine months at the time of the incident, could have handled the interaction with Respondent more informally,

by simply speaking with Respondent if he felt Respondent's comments to him were inappropriate. Counsel argues that under these circumstances, a forfeiture of 20 days is excessive.

On the one hand, counsel for Respondent correctly notes that Respondent was, in fact, placed on sick leave by the Department following the incident, and that not all cases where a police officer speaks discourteously to a superior officer constitute insubordination. However, where, as here, an officer responds with discourteous comments in defiance of a supervisor conveying a lawful order, that officer's conduct may fairly be considered insubordinate. After being verbally instructed to appear for the UNGA detail the next day, Respondent reacted in an extremely disrespectful and unprofessional manner to his supervisor, using profanities to convey his unwillingness to report to his assignment as directed. Specifically, Respondent loudly stated to the sergeant, in an annoyed, aggressive tone, "You've got the wrong fucking person. I'm not fucking doing this. I'm going sick." This exchange occurred inside the stationhouse, loud enough for at least one other supervisor to hear what was being said. In this context, Respondent's actions were insubordinate, and the presumptive penalty of 20 vacation days is appropriate.

Taking into account the totality of the facts and circumstances in this matter, I recommend that Respondent forfeit twenty (20) vacation days.

Respectfully submitted,



Jeff S. Adler
Assistant Deputy Commissioner Trials

DISAPPROVED

AUG 21 2023

EDWARD A. CABAN
POLICE COMMISSIONER



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner – Trials
To: Police Commissioner
Subject: SUMMARY OF EMPLOYMENT RECORD
POLICE OFFICER JAMAL NEWTON
TAX REGISTRY NO. 949391
DISCIPLINARY CASE NO. 2021-24334

Respondent was appointed to the Department on July 6, 2010. On his three most recent annual performance evaluations, he was rated “Meets Standards” in 2020 and 2021, and “Needs Improvement” in 2022.

Respondent has no formal disciplinary history. He was placed on Level I Performance Monitoring from December 4, 2020 through October 18, 2022.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials